

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

LC 2002-000165

12/05/2002

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT  
P. M. Espinoza  
Deputy

FILED: \_\_\_\_\_

STATE OF ARIZONA

BILL C SOLOMON

v.

SHAWN MICHAEL JENNINGS

RICHARD D COFFINGER

PHX CITY MUNICIPAL COURT  
REMAND DESK CR-CCC

MINUTE ENTRY

PHOENIX CITY COURT

Cit. No. #6092799

Charge: 2. DUI OR APC WITH AC .08 OR ABOVE

DOB: 02/13/77

DOC: 12/20/01

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This case has been under advisement since November 6, 2002, which was the time scheduled for Oral Argument. On that date, counsel submitted the case to the Court without oral argument. This Court has considered and reviewed the record of the proceedings from the Phoenix City Court, and the excellent Memoranda submitted by counsel in this case.

The only issue presented in this appeal is whether the trial judge erred in denying Appellant's Motion in Limine to Suppress the Breath Test Results based on the State's alleged failure to prove that the Intoxilyzer 5000 was calibrated within a 31-day period.

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This Court's review of the trial judge's ruling on Appellant's Motion in Limine is made *de novo*.<sup>1</sup> This Court must review the trial judge's ruling using an abuse of discretion standard. That is, this Court should reverse only when it finds that the trial judge abused his or her discretion.<sup>2</sup>

In this case, the trial judge concluded after reviewing the exhibits submitted by the State and Appellant that the Intoxilyzer 5000 was in proper operating condition at the time of Appellant's test.

Appellant argues that one of the calibration checks made upon the Intoxilyzer 5000 that was used to perform Appellant's breath test, was not made within 31-days of a previous check. This 31-day calibration check deadline is required by the Department of Health Services' Rules and Regulations. However, full compliance with Department of Health Service regulations is no longer required as a predicate to admissibility in court.<sup>3</sup> More importantly, A.R.S. Section 28-1323(A) provides a five-part test which, when satisfied, constitutes *prima facie* evidence that an Intoxilyzer machine is operating properly. The statute does not require strict compliance with all Department of Health Services' rules and regulations, including the 31-day calibration test deadline.<sup>4</sup>

In this case, the trial judge correctly concluded that there was sufficient evidence presented by the State that the Intoxilyzer machine was operating properly at the time Appellant's blood alcohol content was measured. This Court finds no error in the trial court's ruling.

IT IS THEREFORE ORDERED affirming the judgment of guilt and sentence imposed by the Phoenix City Court.

IT IS FURTHER ORDERED remanding this matter back to the Phoenix City Court for all further and future proceedings in this case.

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<sup>1</sup> See, State v. Gonzalez-Gutierrez, 187 Ariz. 116, 927 P.2d 776 (1996); State v. Johnson, 184 Ariz. 521, 911 P.2d 527 (App. 1994).

<sup>2</sup> State v. Emery, 141 Ariz. 549, 688 P.2d 175 (1984).

<sup>3</sup> State ex.rel. McDougall v. Superior Court, 181 Ariz. 202, 888 P.2d 1389 (App. 1995).

<sup>4</sup> See, State v. Duber (Duber II), 187 Ariz. 425, 930 P.2d 502 (App. 1996).